Summaries of Selected Cases Concluded by Mediation

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD) AND HOUSING DEPARTMENT (HD)

Case Nos. OMB 2003/3450
OMB 2004/0466

FEHD and HD – refuse collection – failing to properly arrange for refuse collection in a Home Ownership Scheme estate, which led to deterioration in environmental hygiene

The complainant's son was attending a kindergarten in a Home Ownership Scheme estate. She complained that the open car park opposite the kindergarten was being used by the estate management office as a refuse collection point. Stench emitted from the refuse when FEHD staff collected it every morning, causing nuisance to her son's classes and posing a threat to his health. The complainant had written to FEHD several times requesting better arrangements for environmental hygiene. The Department only replied that the matter had been referred to HD but did not take any further action. As the problem persisted, the complainant considered there was maladministration on the part of FEHD and HD.

2. As the case did not involve serious maladministration, we suggested resolving it by mediation and all the parties concerned consented.

3. At the mediation meeting, the complainant gave her opinions on the arrangements for refuse collection. Representatives from FEHD and HD explained their respective follow-up actions and the reasons for not changing the place or time for refuse collection. FEHD and HD also made a number of suggestions on how to improve the environmental hygiene in the estate.

4. Candid discussion resulted in better understanding of one another's position and an agreement on solutions to the environmental hygiene problems in the estate. HD undertook to liaise more closely with the estate management office to ensure that refuse would be placed at the collection point only 30 minutes before the arrival of FEHD vehicle and that all refuse containers would be tightly closed. The cleansing contractor would wash the collection point thoroughly every day and FEHD staff would continue their regular refuse collection there.

5. HD undertook to contact the owners' corporation for meetings with relevant Government departments to identify a suitable location within the estate for a permanent refuse collection point for the longer term.

6. The complainant agreed that her case should be closed.

Summaries of Selected Cases Concluded by Mediation

HOUSING DEPARTMENT (HD)

Case No. OMB 2003/2675

HD – estate maintenance – reluctance and delay in following up a complaint about water seepage through external wall

The complainant, owner of a flat in a Home Ownership Scheme (HOS) estate, noticed water seepage through the external wall. He lodged his complaint with a Housing Manager and a Maintenance Surveyor of HD and requested repair. However, HD staff in the two sections shirked their responsibility and refused to take action.

2. HD explained that as the estate had been occupied for over three years and the warranty had expired, the owner would need proof from authorised professionals that the problem was a "latent defect" before HD's main building contractor would carry out repair.

3. HD was at that time discussing with the main contractor a number of maintenance and repair problems in the estate without reaching agreement. Subsequently, HD decided that for all items in the estate already categorised as "latent defects" (including water seepage through external walls), it would not be necessary to engage an independent surveyor to investigate into the defects. The Department would arrange for its term contractor to carry out the repairs and then seek reimbursement of the costs and on-costs from the main contractor.

4. As the case involved no grave maladministration, this Office suggested resolving the matter by mediation. Both parties agreed.

5. At the mediation meeting, the complainant recounted his demand for repair of the external wall and the interior of his flat, while an HD representative explained in detail the background regarding HD's processing of the case and its current action in maintenance and repairs.

6. After a candid exchange of views, the two parties signed a mediation agreement. The complainant agreed to withdraw his complaint against HD while the latter undertook to repair the external wall and the areas showing seepage inside his flat. The repair work was expected to be completed within seven working days.

Summaries of Selected Cases Concluded by Mediation

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case No. OMB 2003/2382

LCSD – termination of contract – staff breaching an agreement and requesting the complainant to remove all restaurant equipment, whilst refusing to refund part of the security deposit

The complainant was formerly a contractor for a light refreshment restaurant in a LCSD indoor sports centre. The restaurant was later wound up and the complainant claimed to have applied to the Department to allow her to store tables, chairs and other equipment temporarily at the premises until a new operator took over the business. She also requested the Department to refund half of her security deposit. She alleged that LCSD staff had originally agreed to her requests, but then they broke their promise and rescinded their agreement.

2. LCSD explained that as conversion works would soon be carried out to convert the restaurant site into recreational facilities, the complainant was asked to remove all equipment from the restaurant and return the storeroom in accordance with the contract. Nevertheless, the Department had exercised its discretion and allowed the complainant to leave the tables and chairs at the site until conversion works began. Moreover, since the complainant's security deposit was in the form of bank guarantee, the Department was in fact not directly holding her deposit. There was, therefore, no question of refund of the deposit.

3. As the case did not involve serious maladministration, this Office suggested resolving the matter by mediation and both parties agreed.

4. At the mediation meeting, the complainant recounted her request for the Department's permission to leave all the equipment in the restaurant and refund of part of her security deposit. LCSD representative explained how the Department had handled the case and proposed possible solutions to the problem.

5. After a candid exchange of views, LCSD agreed to allow the complainant, without further extension of the bank guarantee period, store the tables and chairs in the restaurant area temporarily until commencement of conversion works towards the end of March 2004. Meanwhile, the complainant had to remove all other equipment and vacate the storeroom by the end of November 2003. The complainant accepted the arrangements and the two parties reached an agreement.